

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ATMI PACKAGING, INC.

Plaintiff,

v.

**MILLIPORE CORPORATION,
and
THERMO FISHER SCIENTIFIC, INC.**

Defendants.

Civil Action No.: 1:10-cv-11247-RGS

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff ATMI Packaging, Inc. brings this action against defendants Millipore Corporation and Thermo Fisher Scientific, Inc. for patent infringement. By this Complaint, Plaintiff seeks, *inter alia*, monetary damages and injunctive relief and allege as follows:

PARTIES

1. Plaintiff ATMI Packaging, Inc. (hereafter “Plaintiff” or “ATMI”) is a Minnesota corporation with a principal place of business at 10851 South Louisiana Avenue, South Bloomington, Minnesota.

2. Upon information and belief, defendant Millipore Corporation (hereafter “Millipore Corporation”) is a Massachusetts corporation with a principal place of business at 290 Concord Road, Billerica, Massachusetts.

3. Upon information and belief, defendant Thermo Fisher Scientific, Inc. (hereafter “ThermoFisher”) is a Delaware corporation with a principal place of business at 81 Wyman Street, Waltham, Massachusetts.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action for patent infringement pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Millipore because it is a Massachusetts corporation with a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

6. This Court has personal jurisdiction over ThermoFisher because it has a principal place of business in Massachusetts and, upon information and belief, makes, uses, sells and/or offers to sell infringing products in Massachusetts.

7. Venue is proper under 28 U.S.C. § 1391(b) (c) and (d) and 28 U.S.C. § 1400(b).

ATMI’S BUSINESS, PRODUCTS AND PATENTS

8. ATMI is a global leader in providing process materials and process technology for the life science industries.

9. ATMI is a technology leader in the field of single-use mixing systems, single-use bioprocess systems and consumables for the pharmaceutical and biopharmaceutical industries. ATMI’s innovative, single-use mixers and bioreactors drive bioprocess efficiency and deliver value for biopharmaceutical companies in the United States and around the world.

10. ATMI is the owner of a portfolio of United States and foreign patents relating to single-use mixing and bioprocess systems, including U.S. Patent No. 7,695,186, U.S. Patent No.

7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983, U.S. Patent No. 7,267,479, U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027 (hereafter “the Asserted Patents”).

11. ATMI manufactures and sells single-use mixing and bioprocess systems covered by one or more claims of the Asserted Patents in the United States and elsewhere in the world.

MILLIPORE’S SINGLE-USE MIXING SYSTEM

12. Upon information and belief, the Mobius Single-use Mixing System (hereafter “Mobius”) is a single-use mixing system that defendant Millipore Corporation manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

THERMOFISHER’S SINGLE-USE MIXING SYSTEMS AND SINGLE-USE BIOPROCESS SYSTEM

13. Upon information and belief, Thermo Fisher’s Thermo Scientific Hyclone Mixtainer System is a single-use mixing system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

14. Upon information and belief, Thermo Fisher’s Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) is a single-use mixing system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

15. Upon information and belief, Thermo Fisher’s Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) is a single-use bioprocess system that Thermo Fisher manufactures, uses, sells and/or offers for sale in Massachusetts and elsewhere in the United States.

**COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 7,695,186)**

16. ATMI re-states and incorporates paragraphs 1-15 of this Amended Complaint as if fully set forth herein.

17. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,695,186 (the “‘186” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

18. In violation of one or more sections of 35 U.S.C. § 271, defendant Millipore Corporation (hereafter “Millipore”) has infringed, and continues to infringe the ‘186 patent by making, using, selling, and/or offering to sell the Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

19. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

20. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) in Massachusetts and elsewhere in the United States.

21. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘186 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

22. ATMI has complied with the statutory requirement of placing a notice of the ‘186 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

23. Millipore's infringement of the '186 patent is causing ATMI reparable and irreparable harm.

24. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

25. Thermo Fisher's infringement of the '186 patent is causing ATMI reparable and irreparable harm.

26. Thermo Fisher's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 7,481,572)

27. ATMI re-states and incorporates paragraphs 1-26 of this Amended Complaint as if fully set forth herein.

28. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,481,572 (the "'572" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

29. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the '572 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

30. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '572 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

31. ATMI has complied with the statutory requirement of placing a notice of the ‘572 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

32. Millipore’s infringement of the ‘572 patent is causing ATMI reparable and irreparable harm.

33. Millipore’s infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

34. Thermo Fisher’s infringement of the ‘572 patent is causing ATMI reparable and irreparable harm.

35. Thermo Fisher’s infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT III
(INFRINGEMENT OF U.S. PATENT NO. 7,086,778)**

36. ATMI re-states and incorporates paragraphs 1-35 of this Amended Complaint as if fully set forth herein.

37. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,086,778 (the “‘778” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

38. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the ‘778 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

39. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘778 patent by making, using, selling, and/or offering to

sell its Thermo Scientific Hyclone Mixtainer System in Massachusetts and elsewhere in the United States.

40. ATMI has complied with the statutory requirement of placing a notice of the '778 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

41. Upon information and belief, Thermo Fisher has had notice of the '778 patent, including the claims therein, and has deliberately and willfully continued to make, use, sell, and/or offer to sell infringing single-use mixing and single-use bioprocess systems despite this knowledge.

42. Millipore's infringement of the '778 patent is causing ATMI reparable and irreparable harm.

43. Millipore's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

44. Thermo Fisher's infringement of the '778 patent is causing ATMI reparable and irreparable harm.

45. Thermo Fisher's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT IV
(INFRINGEMENT OF U.S. PATENT NO. 7,434,983)**

46. ATMI re-states and incorporates paragraphs 1-45 of this Amended Complaint as if fully set forth herein.

47. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,434,983 (the "'983" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

48. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘983 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Mixer (S.U.M.) in Massachusetts and elsewhere in the United States.

49. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘983 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

50. ATMI has complied with the statutory requirement of placing a notice of the ‘983 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

51. Thermo Fisher’s infringement of the ‘983 patent is causing ATMI reparable and irreparable harm.

52. Thermo Fisher’s infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

COUNT V
(INFRINGEMENT OF U.S. PATENT NO. 7,267,479)

53. ATMI re-states and incorporates paragraphs 1-52 of this Amended Complaint as if fully set forth herein.

54. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,267,479 (the “‘479” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

55. In violation of one or more sections of 35 U.S.C. § 271, Millipore has infringed, and continues to infringe the ‘479 patent by making, using, selling, and/or offering to sell its Mobius Single-use Mixing System in Massachusetts and elsewhere in the United States.

56. ATMI has complied with the statutory requirement of placing a notice of the ‘479 patent on all applicable single-use mixing and/or single-use bioprocess systems it manufactures and sells.

57. Millipore’s infringement of the ‘479 patent is causing ATMI reparable and irreparable harm.

58. Millipore’s infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT VI
(INFRINGEMENT OF U.S. PATENT NO. 7,469,884)**

59. ATMI re-states and incorporates paragraphs 1-58 of this Amended Complaint as if fully set forth herein.

60. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,469,884 (the “‘884” patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

61. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the ‘884 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

62. ATMI has complied with the statutory requirement of placing a notice of the ‘884 patent on all applicable single-use bioprocess systems it manufactures and sells.

63. Thermo Fisher's infringement of the '884 patent is causing ATMI reparable and irreparable harm.

64. Thermo Fisher's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

**COUNT VII
(INFRINGEMENT OF U.S. PATENT NO. 7,384,027)**

65. ATMI re-states and incorporates paragraphs 1-64 of this Amended Complaint as if fully set forth herein.

66. ATMI is the owner of and has full right, title, and interest, including all substantial patent rights, in and to U.S. Patent No. 7,384,027 (the "'027" patent) with the exclusive right to sue and collect damages for past, present, and future infringement thereof.

67. In violation of one or more sections of 35 U.S.C. § 271, Thermo Fisher has infringed and continues to infringe the '027 patent by making, using, selling, and/or offering to sell its Thermo Scientific Hyclone Single-Use Bioreactor (S.U.B.) in Massachusetts and elsewhere in the United States.

68. ATMI has complied with the statutory requirement of placing a notice of the '027 patent on all applicable single-use bioprocess systems it manufactures and sells.

69. Thermo Fisher's infringement of the '884 patent is causing ATMI reparable and irreparable harm.

70. Thermo Fisher's infringement will continue to injure ATMI and cause ATMI to suffer financial damage in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, ATMI respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper:

A. Enter judgment that Millipore infringes U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479 in violation of 35 U.S.C. §271 *et seq.*

B. Enter judgment that Thermo Fisher infringes U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027 in violation of 35 U.S.C. §271 *et seq.*

C. Temporarily, preliminarily and permanently enjoin Millipore, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479.

D. Temporarily, preliminarily and permanently enjoin Thermo Fisher, its officers, agents, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.

E. Award ATMI monetary damages for Millipore's infringement of U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778 and U.S. Patent No. 7,267,479.

F. Award ATMI monetary damages for Thermo Fisher's infringement of U.S. Patent No. 7,695,186, U.S. Patent No. 7,481,572, U.S. Patent No. 7,086,778, U.S. Patent No. 7,434,983 and U.S. Patent No. 7,469,884 and U.S. Patent No. 7,384,027.

G. Award ATMI treble damages and its attorneys' fees for Thermo Fisher's willful infringement of U.S. Patent No. 7,086,778.

H. Award ATMI all other relief deemed just and proper by the Court.

JURY DEMAND

ATMI demands trial by jury for all issues so triable.

ATMI PACKAGING, INC.

Date: January 1, 2011

By: /s/ Paul J. Cronin
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants, as well as to Kurt L. Glitzenstein, Esq. of Fish & Richardson P.C., One Marina Park Drive, Boston, Massachusetts 02210, counsel for defendant Thermo Fisher Scientific, Inc., by email and first class mail on January 1, 2011.

/s/ Paul J. Cronin
Paul J. Cronin

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